

REMARKS

This Amendment is submitted in partial response to the Office Action of December 23, 2008. This is in response to the issues raised with respect to **priority** on Pages 2-4 of this Office Action and the **Oath/Declaration** on page 5 of the instant Office Action. A complete timely response to the outstanding office action will be filed in the near future

At the outset, applicant's attorney which to thank the examiner for the courtesies extended to him during the course of the telephone conversation of January 6, 2009 concerning the issues of priority and the Oath/Declaration raised in the outstanding office action. During the course of the telephone conversation the examiner indicated that these issues concerning priority and Oath/Declaration would be removed if applicant submitted an Application Data Sheet under 37 C.F.R. 1.76 specifically enumerating and claiming the priority of the PCT application PCT/US2004/000655 filed on October 29, 2004 and Swiss Application 1848/03 filed on October 30, 2003, and the specification of the instant application is amended to recite that the priority of both the Swiss and the PCT Application are claimed.

In accordance with is discussion, Applicants are enclosing a Patent Application Data Sheet, under 37 C.F.R. 1.76, specifically enumerating both the Swiss and the International PCT application. Also, the specification of the captioned application has been amended to recite and claim the priority of both of these applications. If there is anything further the applicant can do to perfect the priority of both of the Swiss and the PCT Application applications, it is respectfully submitted that the Examiner please inform applicant's attorney.

As set forth, the instant application was filed under 35 U.S.C. 371 of PCT/application/PCT/CH2004/000655. This PCT application claims priority of the aforementioned Swiss application. In view of this the instant application as filed as a 35 U.S.C. 371 application of this PCT contains a claim to the priority of this Swiss application. As set forth, MEP 1893.03 (c) 1 concerning the right of priority:

--Pursuant to 35 U.S.C. 365(b) a U.S. national stage application shall be entitled to a right of priority based on a prior foreign application or international application designating at least one country other than the United States in accordance with the conditions and requirements of 35 U.S.C. 119(a) and the treaty and PCT regulations.--To obtain priority in the U.S. national stage application to such applications, the priority must have been timely claimed in the international stage of the international application.--

This application is a U.S. National Phase application filed under 35 USC 371 a PCT/CH2004/000655 on October 29, 2004. This PCT application claims the priority of Swiss patent application 1848/03 filed October 30, 2003. The prior date of this PCT application and this Swiss application are claimed in this National phase U.S. application.

Based upon the foregoing it is submitted that with the Application Data Sheet and the amendment to the specification the claim to priority has been effectuated in this application and the issues raised with respect to **priority** on Pages 2-4 of this Office Action and the **Oath/Declaration** on page 5 of the instant Office Action. have been obviated

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Respectfully submitted,



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